

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62158A; FRL-6058-6]

RIN 2070-AD11

Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), EPA must establish and implement a fee schedule to recover, for the U.S. Treasury, the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, this rule establishes the fees to be charged in those States and Indian country without

authorized programs for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226. About three-quarters of the nation's housing stock built before 1978 (64 million homes) contains some lead-based paint. When properly maintained and managed, this paint poses little risk. If improperly managed, chips and dust from this paint can create a health hazard. Recent studies indicate that nearly one million children have blood-lead levels above safe limits; the most common source of lead exposure in the United States is lead-based paint. Today's rule supports the effort of 40 CFR part 745, subpart L to ensure that contractors claiming to know how to inspect, assess or remove lead-based paint, dust or soil are well qualified, trained and certified to conduct these activities. This final rule is based on a proposal published in the **Federal Register** of September 2, 1998.

DATES: The requirements in this final rule will take effect on June 11, 1999. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Rm. E-543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202-554-1404 and TDD: 202-554-0551; e-mail address: TSCA-Hotline@epa.gov.

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SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226. Potentially affected categories and entities may include:

Type of Entity	SIC Code	Examples of Entities
Lead abatement professionals	1799, 8734	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. Firms engaged in lead-based paint activities.
Training programs	1799, 8331, 8742, 8748	Training programs providing training services in lead-based paint activities.

This table is not intended to be exhaustive, but rather provides a guide to the entities that are likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the provisions in 40 CFR part 745. The Standard Industrial Classification (SIC) codes that are provided in the table have been included to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the FOR FURTHER INFORMATION CONTACT section.

II. How Can I Get Additional Information, Including Copies of this or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>.

B. In Person

The Agency has established an official record for this action under docket control number OPPTS-62158A. The official record consists of the documents specifically referenced in this action,

any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding

legal holidays. The telephone number of the Center is (202) 260-7099.

III. Who Will Be Required to Pay Fees Under this Rule?

The fees in this rule apply to: (1) Training programs applying to EPA for the accreditation and re-accreditation of training courses in the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, and (2) individuals and firms seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the above-mentioned disciplines. Consistent with TSCA section 402(a)(3) and as further described in this preamble, this rule precludes the imposition of fees for the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

This rule applies only in States and Indian country where there are no authorized programs pursuant to 40 CFR part 745, subpart Q. For further information regarding the authorization status of States or Indian Tribes contact the National Lead Information Center (NLIC) at 1-800-424-LEAD.

IV. Under What Legal Authority Is this Action Being Issued?

EPA is issuing this rule under the authority of section 402 of TSCA (15 U.S.C. 2682). Sections 402(a)(1) and (a)(2) require the Agency to promulgate regulations for, among other things, the accreditation of training programs and the certification of individuals and firms engaged in lead-based paint activities. The regulation titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child Occupied Facilities" was published in the **Federal Register** of August, 29 1996 (61 FR 45805) (FRL-5389-9), and appears at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA requires, with certain exceptions, that the Administrator of EPA impose a fee on persons operating accredited training programs and on individuals and firms engaged in lead-based paint activities certified under TSCA. Section 402(a)(3) requires that the fees be established at a level necessary to cover the costs of administering and enforcing the standards and regulations under this section. EPA does not have the authority to retain fees collected under this program. Therefore, fees collected by the Agency will be deposited into the U.S. Treasury as required by 31 U.S.C. 3302(b).

Section 553 of the Administrative Procedure Act (APA) provides that most final rules should become effective no sooner than 30 days after publication in the **Federal Register**. The purpose of the 30-day lag time is to "afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt." Sen. Rep. 752, 79th Cong., 1st sess. at p.15. However, the APA also provides that agencies may for "good cause" make rules effective in less than 30 days. Such good cause exists if it is in the interest of the persons affected by the rule that it be issued earlier. Attorney General's Manual on the APA at 37. EPA is invoking the "good cause" exemption in section 553(d)(3) of the APA to make this rule effective in less than 30 days because EPA believes that the early effective date will allow parties seeking certification or accreditation under the rule to receive the benefit of earlier EPA action on their applications. This may be particularly important to those training programs which have submitted early applications for accreditation in States and Tribes where EPA is administering the lead program, and which will not be able to offer lead-based paint activities training that satisfies EPA requirements after March 1, 1999, without EPA accreditation. Those parties wishing to defer payment of fees established under this rule may simply defer submission of an application to EPA for accreditation or certification.

V. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. TSCA section 402, *Lead-Based Paint Activities Training and Certification*, directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States and Indian tribes seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities." These rules are codified at 40 CFR part 745, subparts L and Q.

Section 402(a)(3) of TSCA directs the Agency to establish fees to recover the cost of administering and enforcing the

lead-based paint activities training and certification program. The statute provides an exemption from fee payment for training programs operated by a State government, local government, or nonprofit organization.

Today's rule addresses this TSCA requirement with respect to entities regulated under part 745, subpart L. This rule establishes fees for the certification and periodic re-certification of individuals and firms, and for the accreditation and periodic re-accreditation of training programs. Also included are fees for examinations, replacement of a lost certificate or identification card, and for registration in more than one EPA-administered jurisdiction.

This rule also provides an exemption from fee payment for training programs operated by federally recognized Indian Tribes. As more fully described in the proposal for this rule, EPA's action in exempting Tribal training programs from the requirement to pay user fees recognizes that Tribes are government entities that should not be singled out from States and local governments for the payment of user fees.

EPA expects to develop additional regulations addressing lead-based paint activities for commercial and public buildings, bridges and superstructures, renovation and remodeling, and for the disposal of lead-based paint debris. To the extent EPA requires additional accreditations or certifications pursuant to such rules, additional fee rules may be developed.

VI. Summary of Proposed Rule and Public Comments

On September 2, 1998, EPA issued a direct final rule (63 FR 46668) (FRL-6017-8), and proposed rule (63 FR 46734) (FRL-6017-7) to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), the proposed rule would have established fees to recover, for the U.S. Treasury, the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, the proposal established the fees to be charged in those States and Indian country without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

In response to the proposal, EPA received 23 letters from the public during the comment period. On October 16, 1998, EPA announced that it was withdrawing the direct final rule and acting on the proposed rule (63 FR 55547) (FRL-6040-1). The Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors Proposal docket (OPPTS-62158) contains the proposal, public comments on the proposal, material EPA has added in reply to the public comments, and the Regulatory Impact Analysis for the proposed and the final rules.

As indicated above EPA received 23 comments by the close of the comment period. The largest number of responses was received from public health and environmental protection departments (32% of the responses) and lead-based paint activities firms (32% of the responses). Other commenters included representatives of lead-based paint training programs (14% of the responses) and businesses providing both training and consulting services (14% of the responses). A summary of all comments received, and EPA's responses, may be found in the appropriate sections of this preamble, or in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit II. of this preamble). The paragraphs that follow briefly describe

some of the key concerns that were raised by the commenters.

The majority of the comments received raised concerns regarding the fee levels. Specifically the concerns include the following: (1) The fees will be a disincentive to building a network of qualified trainers and abatement professionals; (2) the fees will promote unlawful practice; (3) the fees will have a negative impact on programs to train low-income persons; (4) worker fees are too high and this is magnified by mobility issues; (5) State concerns that the fees do not represent true cost; and (6) the fees will increase abatement cost and reduce the number of homes for which lead-based paint hazards are abated.

Several commenters raised concerns regarding the proposed provisions allowing fee exemptions for training programs operated by State and local governments, federally recognized Indian Tribes, and nonprofit organizations. Commenters also addressed the proposed rule's effect on small business, the multi-jurisdiction registration fee, the proposed one-time firm certification fee, and the inconsistency of inspector and risk assessor fees.

Importantly, EPA received no comments which questioned the overall program cost or the manner in which it was derived.

VII. Final Rule Provisions

In light of the public's comments, the Agency has carefully reviewed the proposed rulemaking and identified areas, within the Agency's discretion, which have been modified in this final rulemaking to respond to public comments. Except for these changes, this final rule is as proposed on September 2, 1998. These changes are described below.

A. Inconsistency of Risk Assessor and Inspector Fees

A commenter notes that the Federal fees seem to be inconsistent for risk assessors versus inspectors. Since an inspection can be conducted not only by a person certified by EPA as an inspector, but also by a person certified by EPA as a risk assessor, it would seem appropriate that the certification and re-certification fee for the risk assessor should be higher than the certification and re-certification fees for the inspector.

Upon review of risk assessor and inspector fees, an error was identified in the manner in which the burden determinations were applied. This error involved the transposition of numbers associated with evaluation factors used in determining the supervisor, risk assessor, and inspector fee levels. The Agency has recalculated the fees based upon corrected evaluation factors with the following result:

Lead-based Paint Activities-Individual	Certification	Re-certification
Inspector	\$400	\$350
Risk assessor	\$520	\$420
Supervisor	\$470	\$390

B. Firm Fee

EPA received comments regarding the firm fee. The commenters note that a one-time fee collected from a firm will do little in future fiscal years to recover the costs associated with the firm. Furthermore, several commenters do not feel that the proposed fee is adequate to recover costs.

The Agency evaluated the one-time certification fee for firms and agrees that it is inadequate to recover costs associated with the firm in future years. Therefore, the Agency will charge a fee to maintain a firm's certification of \$430 every 3 years following initial certification to recover the continuing costs associated with the firm. This fee will include the established fixed amount to recover enforcement and headquarters administrative costs along

with the cost of additional administrative tasks associated with this fee collection.

C. Worker Fee Levels and Worker Mobility

EPA received comments which expressed concern that worker fee levels are too high. One commenter feels that the total impact of training, certification, and lost wages during training for workers is cost prohibitive. Another commenter points out that workers are hourly wage-earners and cannot afford the fees proposed by EPA.

Many of the commenters were also concerned that the high fee levels are magnified by worker mobility issues which will further drive contracting firms costs up. The commenters feel that workers are hired for a particular job

and laid off at the completion of that job. Therefore, workers tend to move from firm to firm and even out of the business. The commenters believe that these costs are prohibitive for contractor firms and make the cost of employee attrition unmanageable.

EPA also received comments which raised the issue that the proposed fees would have a disproportionately negative impact on efforts to train and certify low-income persons from the neighborhoods that are most impacted by lead hazards. As one commenter states "the fees will have a chilling effect on community/low-income worker training programs."

In response to these comments the Agency has decided to adjust the program cost distribution as it relates to firms and workers. The Agency, in a

separate determination discussed above, has evaluated the one-time certification fee for firms and has determined that it is inadequate to recover costs associated with the firm in future years. The Agency will charge a fee to maintain a firm's certification of \$430 every 3 years following initial certification. Therefore, the Agency has applied the increased revenue generated by the additional firm fee to reduce the worker fee level. The worker fee has decreased approximately 22% from \$360 to \$280. This \$280 fee for workers provides for a 3- or 5-year certification period based upon the type of course completed. This translates to an annual cost of between \$56 and \$94. The worker re-certification fee was correspondingly lowered to \$240.

D. Multi-jurisdiction Registration Fees for Firms

A commenter noted that firms are not assessed a multi-jurisdiction registration fee as are individuals and training providers.

Upon review of multi-jurisdiction registration fees for firms, an omission was found in the text of the proposed rule. The Economic Analysis for the rulemaking takes into account multi-jurisdiction registration for firms, the proposed rule does not. Therefore, EPA has modified the final rule text to include multi-jurisdiction fee provisions for firms.

E. Multi-jurisdiction Registration Fees for Indian Country

EPA received comments which argue that the accreditation and certification fees would be a disincentive to building a network of qualified trainers and abatement professionals.

Upon further evaluation it was determined that the multi-jurisdiction registration fee may cause a negative impact on the availability of lead abatement services in Indian Country. The Agency feels that the proposed multi-jurisdiction fee may be prohibitive and decrease the number of individuals, firms, and training programs willing to offer services in Tribes.

Therefore, the Agency has decided to change the multi-jurisdiction registration fee by modifying how the fee relates to Indian Tribes. Certification and accreditation to perform lead-based paint activities in Indian Tribes without authorized programs will be issued according to the boundaries established by the 10 EPA Regions. Therefore, an individual, firm, or training program that is certified or accredited to provide lead abatement services or training in any unauthorized Indian Tribe within a

given EPA Region will be able to provide services in all unauthorized Indian tribes within the EPA Region. Also, the title "multi-state registration fee" in the proposed regulatory text has been modified to "multi-jurisdiction fee" to better reflect the nature of the fee.

F. Definition of Nonprofit

EPA received a comment which questions the adequacy of the proposed definition of "nonprofit." The commenter states that labor-management sponsored training programs, which are operated as nonprofit entities, are for the most part not qualified under 501(c)(3) of the Internal Revenue Service (IRS) code.

EPA notes that Subtitle C of Title X (section 1033), amending the Occupational Safety and Health Act of 1970, provides authority to provide grants to nonprofit organizations seeking to establish training programs. That provision defines nonprofit organizations as including colleges and universities, joint labor-management trust funds, states and nonprofit government employee organizations. As indicated, this statutory language includes labor-management trust funds, many of which the commenter notes would not be eligible for fee waivers under the proposed rule. It is the Agency's position that the definition of nonprofit be refined for purposes of this rulemaking in order to be consistent with this related provision.

In the process of refining the definition of nonprofit, the Agency has determined that no single IRS tax exempt classification or group of classifications adequately incorporates nonprofit training programs for purposes of this rulemaking. Therefore, a more general definition was developed which enables the Agency to adequately ensure the nonprofit status of an organization without incorporating the constraints of the IRS tax exemption classifications. The revised definition reads as follows: "Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual."

VIII. How Do I Pay the Fees?

Each fee payment described in this rule shall be in U.S. currency and shall be paid by check or money order. Individuals, firms, or training programs shall submit fee payments in accordance with instructions provided with the application materials. No application will be considered complete until

payment is made and final certification/accreditation shall be dependent on the payment of the applicable fees.

IX. How Can I Apply for Accreditation or Certification?

The application requirements can be found in 40 CFR 745.225 and 745.226. In addition, the Agency has prepared application packages and guidance on applying. This material is available from EPA through the National Lead Information Center at 1-800-424-LEAD.

X. How Do the Regulatory Assessment Requirements Apply to this Action?

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) it has been determined that this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). EPA has prepared an economic analysis of the potential impact of this action, which is estimated to be \$5.6 million over the next 5 years. The analysis is contained in a document entitled "Economic Analysis of the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fee Rule." This document is available as a part of the public version of the official record for this action.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As indicated in Unit I. of this preamble, within the EPA-administered universe, the potentially affected entities consist of the following three basic types of entities: (1) Individuals engaged in lead-based paint activities; (2) firms engaged in lead-based paint activities; and (3) for-profit entities providing lead-based paint training. The potential impact of this action on small entities within this universe is described in Chapter 6 of the economic analysis, as referred to in Unit X.A. of this preamble.

In estimating the universe of potentially impacted small entities, EPA used the definitions provided by the Small Business Administration (SBA). This rule provides fee waivers for training programs operated by State and local governments, Indian Tribes, and nonprofit organizations. As such, these entities are not affected by this rule. With regard to individuals, to the extent that "individuals" are in business for themselves, EPA considered that entity to be a firm with one employee. The

analysis assumes that firms are likely to pay all or a portion of their employee's certification fees. As a result, the small entity impact analysis focuses on the potential impacts on two distinct types of affected entities, i.e., firms engaged in lead-based paint activities (including individuals in business for themselves), and for-profit entities providing lead-based paint training.

EPA estimates that 1,541 firms engaged in lead-based paint activities will be certified during the first 5 years in the EPA-administered program universe. Using the revenue distribution for Standard Industrial Code (SIC) 1799 and 8734, EPA estimates that approximately 98% of these firms qualify as "small" under the SBA definition for small businesses. However, even if the Agency assumes that the firms pay all of the certification fees for their employees, the impact is still estimated to be less than 1% of annual revenues for all of these firms.

Within the EPA-administered program universe, EPA estimates that there will be 52 training providers accredited during the first 5 years in the EPA-administered program universe. Of the 52, only 60% (31) of these training providers are estimated to be for-profit entities that will be required to pay a fee. Using the revenue distribution for SIC 1799, EPA estimates that virtually all of these for-profit training providers qualify as "small" under the SBA definition of small business. Although it is estimated that 12 of these 31 fee paying for-profit training providers may incur impacts that are slightly higher than 3% of their revenue, the data also suggest that these for-profit training providers have greater revenues than the SIC 1799 revenue distribution suggests. For example, using the revenue distribution of Massachusetts and Ohio training providers, only 1 of the 31 for-profit training providers is estimated to have a potential impact of greater than 1% of annual sales.

As indicated above, additional details regarding the Agency's basis for this certification are presented in Chapter 6 of the economic analysis, which is included in the public version of the official record for this action. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et*

seq. The information collection referenced in this rule (i.e., those included in 40 CFR 745.238) have already been approved by OMB under control number 2070-0155 (EPA ICR #1715.02). This rule does not have any impact on the existing burden estimate or collection description, such that additional approval by OMB is necessary.

The existing Information Collection Request (ICR), identified as EPA ICR 1715.02, identifies and quantifies the burden associated with the submission of applications by individuals, firms, and training programs. The burden estimates are based on the following required submissions:

1. *Firms.* A certification letter.
2. *Training program.* An application which includes the following: (i) The training programs name, address, and telephone number, (ii) a list of courses for which it is applying for accreditation, (iii) a statement signed by the training program manager that clearly indicates how the training program meets the minimum requirement for accreditation, or a statement that indicates that the training program will use the EPA-developed curriculum if available, (iv) a copy of the course test, a description of the activities and procedures for conducting the assessment of hands on skills, and a description of the facilities and equipment for lecture and hands on training, and (v) a quality control plan, which outlines procedures for periodic revision of training materials and exams, annual reviews of instructors, and adequacy of training facilities.

3. *Individuals.* For supervisors, risk assessors, and inspectors an application which includes the submission of proof of: (i) Completion of an accredited training course, (ii) passing the course test, (iii) meeting the educational and/or experience requirements (if applicable), and (iv) passing the third party exam. For project designers and abatement workers an application which includes submission of proof of: completion of a training course, passing the course test, and meeting educational and/or experience requirements (if applicable).

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with

any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing applicant burden, including through the use of automated collection techniques, may be submitted to the person listed in the "FOR FURTHER INFORMATION CONTACT" section at the beginning of this document, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205. This rule is not expected to result in expenditures of \$100 million or more in any given year for State, local and Tribal governments, in the aggregate, or for the private sector. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Orders 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and

minority communities. The Agency's analysis determined that the fees are not likely to cause disproportionate impacts for minority or low-income populations. The cost of the fees, even if passed on to consumers, is a small fraction of the cost of lead hazard evaluation and abatement projects. Thus, the establishment of these fees is not likely to result in fewer lead hazard evaluation or abatement activities. In addition, EPA, HUD, and State and local organizations have developed programs to help disadvantaged communities respond to lead risks.

H. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA has determined that this rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A. of this preamble). Furthermore, although this rule is associated with EPA's overall lead-based paint management program which is designed to reduce health risks to children, this rule itself simply establishes a user fee schedule and does not address environmental health or safety risk.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use

available and applicable voluntary consensus standards.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 745 is amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681-2692, and 42 U.S.C. 4852d.

2. In § 745.223 by adding the following three new definitions in alphabetical order to read as follows:

§ 745.223 Definitions.

* * * * *

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

* * * * *

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

* * * * *
 3. In § 745.225 by adding paragraphs (b)(4) and (f)(3)(v) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *
 (b) * * *
 (4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

* * * * *
 (f) * * *
 (3) * * *
 (v) A payment of appropriate fees in accordance with § 745.238.

* * * * *
 4. In § 745.226 by adding paragraphs (a)(6), (e)(3), (f)(6), and (f)(7) to read as follows:

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

* * * * *
 (a) * * *
 (6) Individuals applying for certification must submit the

appropriate fees in accordance with § 745.238.

* * * * *
 (e) * * *
 (3) Individuals applying for re-certification must submit the appropriate fees in accordance with § 745.238.

* * * * *
 (f) * * *
 (6) Firms applying for certification must submit the appropriate fees in accordance with § 745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with § 745.238 every 3 years.

* * * * *
 5. By adding § 745.238 to read as follows:

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

(a) *Purpose.* To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) *Persons who must pay fees.* Fees in accordance with paragraph (c) of this section must be paid by:

(1) *Training programs.* (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(ii) *Exemptions.* No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) *Firms and individuals.* All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(c) *Fee amounts—*(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

Certification and Accreditation Fee Levels

Training Program	Accreditation ¹	Re-accreditation ¹ [every 4 years, see 40 CFR 745.225(f)(1) for details]
Initial Course		
Inspector	\$2,500	\$1,600
Risk assessor	\$1,760	\$1,150
Supervisor	\$3,250	\$2,050
Worker	\$1,760	\$1,150
Project designer	\$1,010	\$710
Refresher Course		
Inspector	\$1,010	\$710
Risk assessor	\$1,010	\$710
Supervisor	\$1,010	\$710
Worker	\$1,010	\$710
Project designer	\$640	\$490

Lead-based Paint Activities-Individual	Certification ¹	Re-certification ¹ [every 3 or 5 years, see 40 CFR 745.226(e)(1) for details]
Inspector	\$400	\$350
Risk assessor	\$520	\$420
Supervisor	\$470	\$390
Worker	\$280	\$240
Project designer	\$470	\$390

Lead-based Paint Activities-Firm	Certification ¹	Certification Renewal ¹ [every 3 years, see 40 CFR 745.226(f)(7) for details]
Firm	\$540	\$430

¹Fees will be adjusted periodically based on adjustments accounting for changes in participation and operating costs.

(2) *Certification examination fee.* Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of \$70 for each exam attempt.

(3) *Multi-jurisdiction registration fee.* An individual, firm, or training program certified or accredited by EPA may wish to provide training or perform lead-based paint activities in additional EPA-administered jurisdictions. A fee of \$35 per discipline will be assessed for each additional EPA-administered jurisdiction in which an individual, firm, or training program applies for certification/re-certification or accreditation/re-accreditation. For purposes of this multi-jurisdiction registration fee, an EPA-administered jurisdiction is either an individual state without an authorized program or all Indian Tribes without authorized programs that are within a given EPA Region.

(4) *Lost identification card or certificate.* A \$15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(d) *Application/payment procedure—*
(1) *Certification and re-certification in one or more EPA-administered jurisdiction—* (i) Individuals. Submit a completed application (titled “Application for Individuals to Conduct Lead-based Paint Activities”), the materials described at § 745.226, and the

application fee(s) described in paragraph (c) of this section.

(ii) Firms. Submit a completed application (titled “Application for Firms to Conduct Lead-based Paint Activities”), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(2) *Accreditation and re-accreditation in one or more EPA-administered jurisdiction.* Submit a completed application (titled “Accreditation Application for Training Programs”), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(3) *Application forms.* Application forms and instructions can be obtained from the National Lead Information Center at: 1-800-424-LEAD.

(e) *Identification card replacement and certificate replacement.* (1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) Individuals. “Application for Individuals to Conduct Lead-based Paint Activities.”

(ii) Firms. “Application for Firms to Conduct Lead-based Paint Activities.”

(iii) Training programs. “Accreditation Application for Training Programs.”

(2) Submit application and payment in the amount specified in paragraph

(c)(4) of this section in accordance with the instructions provided with the application package.

(f) *Adjustment of fees.* (1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

(g) *Failure to remit a fee.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

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